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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 2nd August, 1985:—

I

BILL No. XI OF 1985

A Bill to provide for the abolition of capital punishment.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Capital Punishment Abolition Act, 1985.

Short
title and
com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2 In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) "citizen" means a person who is a citizen of India under the Constitution of India;

(b) "court" means a Court of Session, High Court or the Supreme Court of India; and

(c) "offence" means any act or omission made punishable by any law for the time in force.

45 of 1860.

3. Notwithstanding anything contained in the Indian Penal Code or any other law for the time being in force, no court shall impose punishment of death on a citizen for any offence committed by him.

No court
to punish
with
death.

STATEMENT OF OBJECTS AND REASONS

In many countries capital sentence as a measure of punishment has been abolished. The purpose of giving punishment to an offender is both reformative and deterrent. The awarding of death sentence even with the utmost care cannot be considered as infallible. It is for this reason that in some countries capital sentence has been abolished. The Bill seeks to achieve this aim.

V. GOPALSAMY.

II

BILL NO. XII OF 1985

A Bill further to amend the Indian Telegraph Act, 1885 and the Indian Post Office Act, 1898, with a view to removing the power of the Central Government or State Government to intercept messages and postal articles.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

- | | | |
|-------------|--|-------------------------|
| | 1. This Act may be called the Interception of Messages and Postal Articles (Removal of Power) Act, 1985. | Short title. |
| 13 of 1885. | 2. In the Indian Telegraph Act, 1885, section 5 shall be omitted. | Omission of Section 5. |
| 6 of 1898. | 3. In the Indian Post Office Act, 1898, section 26 shall be omitted. | Omission of Section 26. |

STATEMENT OF OBJECTS AND REASONS

Section 5 of the Indian Telegraph Act, 1885 and Section 26 of the Indian Post Office Act, 1898 give power to the authorities to intercept messages and postal articles. A report has disclosed widespread interception of letters and telegrams to and from persons listed by a State Government to be kept under surveillance. There were instances of this earlier also. This is being sought to be justified under the above mentioned enactments which were framed by an imperial government which had reasons to suspect danger from innocent public activity. The practice and power from which it emanates is, in the present democratic set-up, most reprehensible and archaic. These provisions are relics of a bygone age of arbitrary irresponsible administration having little regard for inviolability of human liberties. After India attained Independence, these provisions which confer power to invade a citizen's right to privacy should have been withdrawn at one stroke. Such a practice can become a convenient tool in the hands of unscrupulous authorities to be used more for partisan purposes than for "public safety". The most obnoxious aspect of the whole sordid story is that the powers of mail interception have been in use in Karnataka and Tamil Nadu. It is therefore necessary that exercise of such power should be done away with.

Hence the Bill.

V. GOPALSAMY

I II

BILL NO. XIII OF 1985

A Bill to regulate the operation of foreign companies in India in the interest of economic development of the country and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Foreign Companies (Regulation) Act, 1985.

Short
title and
extent.

(2) It extends to the whole of India.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

1 of 1956.
49 of 1976.

(a) "foreign company" means a foreign company within the meaning of section 591 of the Companies Act, 1956 and section 2(e) (iii) of the Foreign Contribution (Regulation) Act, 1976;

46 of 1973.
49 of 1976.

(b) words and expressions used but not defined in this Act and defined in the Foreign Exchange Regulation Act, 1973 and the Foreign Contribution (Regulation) Act, 1976 shall have the meaning respectively assigned to them in these Acts.

Applica-
tion of
other
laws not
barred.

3. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Regula-
tion of
Foreign
Com-
panies
operating
in India.

4. Notwithstanding any thing contained in any other law for the time being in force, no foreign company (other than a banking company) which is not incorporated under any law for the time being in force in India, or any branch of such company (other than airlines or shipping companies) shall have the right to carry on, or to continue to carry on, any business in India after the expiry of six months from the date of commencement of this Act except as a company incorporated under the Companies Act, 1956.

1 of 1956.

Foreign
Com-
panies to
convert
them-
selves
into
Indian
com-
panies.

5. (1) Where any company including its branch as is referred to in section (4) is operating in India, except as a company incorporated under the Companies Act, 1956, such company shall within a period of six months from the date of commencement of this Act convert itself into an Indian company incorporated under the Companies Act, 1956.

1 of 1956.

1 of 1956.

(2) All companies incorporated in India, whether existing on the date of commencement of this Act, or incorporated under the provisions of sub-section (1), shall, within a period of six months from the date of commencement of this Act, accept Indian share participation of not less than sixty per cent save as provided hereunder:—

(a) the companies exporting at least sixty per cent of their production, in industries specified by the Central Government by an order which has been approved by Parliament, shall accept not less than twenty-six per cent Indian share participation; and

(b) the companies exporting cent per cent of their product shall be permitted to retain cent per cent foreign ownership.

Powers
of Cen-
tral
Govern-
ment
and the
Reserve
Bank in
certain
cases.

6. The Central Government may in consultation with the Reserve Bank of India and in the interest of development of the Indian economy or improvement of foreign exchange reserves allow foreign participation in excess of the percentage referred to in sub-section (2) of section 5, in industries to be specified by the Central Government by an order which has been approved by Parliament, on the condition that the Indian share holding for that company shall be wholly controlled by a public financial institution or by the Central Government.

Restric-
tions on
foreign
nationals
to carry
on busi-
ness in
India.

7. (1) Without prejudice to the provisions contained in any other law for the time being in force, a person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident interest is more than forty per cent or any branch of such company shall not—

(a) carry on any business activity unless it has received specific approval in writing from the Central Government and the Reserve Bank of India for its annual licensed capacity which shall be deemed to include all the shifts for each and every item to be manufactured by it;

(b) expand its capacity over and above the annual licensed capacity or undertake manufacture of any new item without further specific approval of the Central Government and the Reserve Bank of India:

54 of 1969. Provided that if the undertaking is an undertaking within the meaning of section 20 of the Monopolies and Restrictive Trade Practices Act, 1969, no such approval shall be given by the Central Government or the Reserve Bank of India without obtaining permission from the Monopolies and Restrictive Trade Practices Commission.

(2) Where any such person or company or a branch of such company is carrying on business on the date of the commencement of this Act it shall cease to do so unless it applies to the Central Government and the Reserve Bank of India within six months from the date of commencement of this Act for registration of an annual licensed capacity as defined in clause (a) of sub-section (i) for each and every item of manufacture and the annual licensed capacity for which application is made shall not exceed the average of the previous three years production for each item of manufacture separately.

(3) On receipt of an application under sub-section (2), the Central Government and the Reserve Bank of India may, after making such inquiry as they deem fit, either register the annual licensed capacity subject to such conditions, if any, as they may deem fit to impose or reject the application but shall not register a licensed capacity exceeding the previous three years average production.

(4) Where an application for registration is rejected, the applicant shall not carry on its manufacturing activity until permission is received and licensed capacity is registered.

(5) No expansion or diversification of the manufacturing activities of any such company over its licensed capacity shall be allowed except with the specific approval in writing of the Central Government and the Reserve Bank of India:

54 of 1969. Provided that if the undertaking is an undertaking within the meaning of section 20 of the Monopolies and Restrictive Trade Practices Act, 1969, no such approval shall be given without a recommendation from the Monopolies Commission.

8. Notwithstanding anything contained in any other law, for the time being in force, any person or company or branch of a company referred to in section 7 shall not—

(i) carry on any trading activity in items not manufactured by that person or company or branch except when,

(a) the items are of an ancillary nature or functionally related to the manufactured items of the company;

(b) the total sales of such items do not exceed ten per cent of the total sales of the company; and

(c) such person or company does not use, for internal trade, his or its trade marks or brand names in respect of products not manufactured by that person or company or branch of a company;

Restrictions on establishment of place of business in India.

(ii) permit any trade mark, which he or it is entitled to use to be used by any person or company for goods or services to be sold within India.

(iii) pay any amount as his or its share of expenses incurred by any person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but is resident in India or a company (other than a banking company) which is not incorporated under any law in force in India.

(iv) issue bonus shares against reserve created by revaluation of assets or issue any share in consideration of capitalization of any trade mark.

(v) remit expenses on account of head office expenses, area office expenses technical service fees etc., which exceed the net real foreign exchange earnings.

Explanation.—For the purpose of this Act, real foreign exchange means the export value realized of the goods less the cost of goods exported.

Restriction on using foreign trade marks in India.

9. (1) No company or person in India shall—

(a) use a trade mark whose registered owner is a person not resident in India (whether a citizen of India or not) or a person who is not a citizen of India or a company (other than a banking company or an airlines) which is not incorporated under any law for the time being in force in India or in which the non resident interest is more than forty per cent of its capital or any branch of such company, except where the use of such trade mark is for goods exported out of India;

(b) use a hyphenated trade mark, which is a new name partly consisting the trade mark of the collaborator and partly the Indian company name or trade mark, if the hyphenated trade mark's ownership does not rest with the Indian resident or company;

(c) use the company name of the foreign collaborators' as a trade mark, if such name is not registered in India with ownership resting with the Indian company or person.

(2) Every person or company who is using a foreign trade mark on the commencement of this Act, shall either arrange the transfer of ownership to any Indian company or person (without any payment) or discontinue such use within twelve months thereof.

Foreign companies not to regulate the services of directors.

10. Any company (other than a banking company) in which the non-resident interest is more than forty per cent of its capital shall not contain any provision in its Articles of Association or Memorandum of Association regarding appointment of certain persons as permanent directors or for placing any restriction on the appointment or retirement of any directors or managing directors which has the effect of placing this power in the hands of companies incorporated abroad.

11. Where under any provision of this Act, any permission or licence has been given or granted to any person subject to any condition, and

(i) such person fails to comply with all or any of the conditions; or

(ii) any other person abets such person in not complying with all or any of such conditions, then for the purposes of this Act,—

(a) in the case of a person referred to in clause (i), such person shall be deemed to have contravened such provisions; and

(b) in the case of a person referred to in clause (ii), such person shall be deemed to have abetted the contravention of such provisions.

Failure to comply with conditions subject to which permission or licences have been given or granted under the Act.

12. If any person contravenes any of the provisions of this Act or any rules directions or orders made thereunder, he shall be liable to such fine not exceeding five times the amount of value involved in any such contravention or one lakh rupees, whichever is higher, as may be adjudged by the Director of Enforcement or any other officer of the Directorate of Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in this behalf by an order of the Central Government.

Penalty.

13. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, take any step not inconsistent with the provisions of this Act for the purpose of removing the difficulty.

Power to remove difficulties.

STATEMENT OF OBJECTS AND REASONS

India has taken a leading role at UNCTAD, group of 77 and other forums to help the developing nations develop economically. In particular there has been emphasis to regulate the multinational companies. To ask the multinational companies to develop a code of conduct for themselves makes little sense. It makes sense for each nation to develop legislation for regulating the activities of the multinational company's so that their activities are in line with the priorities of the host country.

The Foreign Exchange Regulation Act is concerned with conserving foreign exchange, but only one section (29) is concerned with regulating the multinational company's activities in the country. We should be very clear as to why the multinational company is required in the country and what it is going to contribute towards fulfilling our economical objective and goals.

The most absurd situation is, regarding the use of foreign brand name. What economic benefit does the country derive from the use of such foreign brand name? Japan has developed into a great nation, without using foreign brand names and infact have developed their own brand names, of which Japan is rightly proud of. It is bad enough, that after more than 30 years of planned development, we still need to take technology for blades, scooters, cosmetics, etc., but we are now opting for the use of foreign brand names. Technology dependence is for a short time, but brand names will make us subservient to multinational companies for life.

In spite of FERA and Trade Mark and Merchandising Act, Max Factor and Old Spice operate in India without any permission from any ministry. Now Rothmans and Chesterfield Cigarettes have started without government sanction, and apparently no sanction is required.

The usual defence of the pro multinational companies lobby has been that everything has to be bilateral. Our import policy and export incentive is a classical case where we do not follow bilateralism. We ban the import of an item (or levy a very heavy duty) and give incentives to export the same item. This makes sense because it suits our economic needs and priorities and foreign exchange situation.

There are no guidelines as to when and on what basis can a multinational company share expenses with head office. What is the guideline on profit as a percent of the capital employment. Should not the multinational company export something to cover the foreign exchange outflow due to profit or sharing of head office expense.

There is a need to ensure that the multinational company is restricted to the field for which the foreign collaboration has been granted and that they do not diversify into other activities without a specific

approval of the government. Strangely enough there are a lot of regulations and restrictions and yet foreign companies are able to:—

1. Diversify into activities for which permission was not granted, like Binaca toothbrush, or chicklets chewing gum by Richardson Hindusthan.
2. Use foreign brand names with government sanction.
3. Remit large sums of money, out of proportion to the capital investment.
4. Crush indigenous industry (Cadbury Chocolates crushed Sathe and Dr. Winters, Nescafe crushed Polson's Coffee).

There is a need to ensure that multinational company's activities do not hurt indigenous industry and yet the Government must ensure fierce competition by encouraging more and more indigenous companies entering into fields where competition is necessary. M.I.T.I. in Japan ensures that no foreign company hurts the interest of local Japanese companies.

There is need to reduce regulations and restrictions in general, so that industry develops rapidly, but a check and control on foreign companies is very necessary, if we want to be a proud nation and a self reliant nation.

We seem to be duplicating importing of technology, which is a waste of foreign exchange. As an example, technology from Vespa was imported by Bajaj and then later by Lohia and Andhra Scooter. Also we all agree that foreign companies, in consumer goods, which have no technology, (like toothpaste, talcum powder, cosmetics etc.) are not necessary, and no foreign exchange should be wasted on them. As a matter of fact with the exit of I.B.M. and Coca Cola the computer industry and the soft drink industry developed much faster.

Hence this Bill.

SURESH KALMADI

IV

BILL No. XX OF 1985

A Bill to prevent the misuse of religious places

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short
title,
extent
and
com-
mence-
ment.

1. (1) This Act may be called the Prevention of Misuse of Religious Places Act, 1985.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Defini-
tions.

2. In this Act, unless the context otherwise requires “religious place” means a gurudwara, temple, mosque, church or such other place belonging to or connected with such a religious place.

3. The use of any religious place for manufacturing or storing of arms and ammunition shall be unlawful.

Prohibition on manufacture or storing of arms in religious places.

4. No religious place shall be used for giving protection to a person declared to be a criminal or anti-national or terrorist under any law for the time being in force.

Religious places not to give protection to criminals, etc

5. (1) The Central Government shall constitute a Committee consisting of representatives of various religious communities to inspect regularly a religious place with a view to ascertaining whether any such place is being used in contravention of the provisions of this Act.

Constitution of a Committee to inspect

(2) The Committee shall submit its report to the Central Government from time to time indicating cases of misuse of religious places and also suggesting measures for preventing such misuse.

a religious place.

(3) A copy of every report of the Committee shall be laid before both Houses of Parliament.

6. Any person who uses a religious place in contravention of this Act shall be liable to imprisonment for a term which may extend to one year or with fine or with both.

Punishment.

STATEMENT OF OBJECTS AND REASONS

In the recent past in Punjab, large number of arms and ammunition and their manufacturing units were unearthed during the military action known as 'operation blue star'. These arms were stockpiled in the vicinity of the Golden Temple and were being used against innocent people. There was an arms manufacturing unit in the Golden Temple itself. Arms were also obtained from various other countries and dumped there in the name of God. The situation was so grave that the Government had no other alternative but to order the entry of armed forces in such places. If timely action had not been taken by the Government, the whole country would have been put to danger. The misuse of religious places by extremists and criminals has shown that in the name of religion these places were used by the anti-national elements. To avoid recurrence of such incidents in future, it is high time to enact a law to put a ban on dumping of arms and providing shelter to extremists and criminals in religious places.

Hence this Bill.

ADINARAYANA REDDY

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides for the constitution of a Committee, consisting of representatives of various religious communities, by the Central Government to inspect all religious places regularly. There will be some expenditure on travelling, etc. by the Committee. The Bill, if enacted, will therefore, involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees two lakhs per annum.

It is also likely to involve a non-recurring expenditure of about rupees fifty thousand per annum.

SUDARSHAN AGARWAL,
Secretary-General.

